IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 341 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AJAB SINGH

Versus

NATIONAL SEEDS CORPORATION LIMITED

Appearance:

1. Special Civil Application No. 341 of 2004

MR YATIN OZA, Sr. Counsel with MS SONAL R SHAH for Petitioner No. 1

MR KIRTIDEV R DAVE for Respondent No. 1,3,5

NOTICE SERVED for Respondent No. 1,2,4-5

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of Order: 01/02/2005

ORAL ORDER

In this petition the petitioner has challenged the order passed by the Disciplinary Authority on 24.5.2001, by which the Disciplinary Authority was pleased to impose a punishment on the petitioner of reduction to a lower stage in time-scale of pay by five stages for a period of 5 years. It was further provided that during the said period the petitioner would not earn any increment and after expiry of the period, it will have the effect of postponing the future increments of the petitioner. The said order dated 24.5.2001 came to be upheld by the Appellate as well as Reviewing Authorities. The petitioner has therefore challenged the said orders adverse to the petitioner in the present petition.

2. At the time of issuance of notice, learned Counsel for the petitioner has made a statement that the petitioner restricts the challenge to the quantum of punishment only and not on the legality of departmental proceedings and findings arrived at. The legality of the Departmental enquiry and the conclusions on facts of the Disciplinary Authority therefore are not under challenge. In response to the notice issued by this Court, the respondents have appeared and filed affidavit-in-reply and have also opposed any reduction in punishment.

3. To consider whether the facts of the case call for interference with the quantum of punishment, I have heard the learned Counsel for the petitioner at considerable length. To appreciate the arguments advanced, it would be useful to note the charges levelled against the petitioner and the conclusions of the enquiry as well as disciplinary authority with respect to these charges. From the statement of articles of charge dated 12.10.1998, it can be seen that the following three charges were levelled against the petitioner.

"Charge No.1. : Out of production programme organised by Hathras sub-unit during Kharif 1997, a quantity of 87.90 qtls. of Paddy Pusa Basmati-I pertaining to lot No. Nov.97-24-50-03 allotted by UPSSCA was failed in State Seed Testing Laboratory vide Seed Analysis Report No. T-12/37 dated 15.4.1998. The UPSSCA had issued advance tags against lot No. Nov-97-24-50-03 subject to meeting the certification standard failing which the tags issued were required to be returned to the certification Agency. Shri Ajab Singh in contravention of laid down procedure did not remove the tags from the failed seed bags after receipt of aforesaid Analysis report dated

15.4.98 and did not return tags to UPSSCA immediately after receipt of results.

Charge No.2 : On the other hand, in contravention of laid down procedure, Shri Ajab Singh despatched 117.60 qtls. Paddy Pusa Basmati-I vide Lorry Receipt No. 35116 dated 15.5.98 from NSC, Hathras to Area Manager, CS & SD, New Delhi without issuing Certificate of Physical Inspection which is a basic requirement for despatch of seeds.

Charge No.3 : Shri Ajab Singh despatched 21 bags (630 kgs) of failed lot No. Nov-97-24-50-03 while despatching 117.60 qtls. Paddy Pusa Basmati-I vide LR No. 35116 dated 15.5.1998. As certification tags were intact, out of these 21 bags, 17 bags (510 kgs.) of Paddy Pusa Basmati seed were sold by Delhi Sales Counter on 16/18th May, 1998. On receipt of complaint from the buyers, supply of Paddy PB-I of poor quality was detected. The above lapse on the part of Shri Ajab Singh in the despatch of Paddy PB-I has not only caused financial loss to the Corporation but it has also damaged the reputation of the Corporation in the public.

The above acts on the part of Shri Ajab Singh show gross negligence, carelessness and lack of devotion to duty in the discharge of his official duties and thus he has violated the provisions of Rule No. 1(ii) (iii) and 7(9) of National Seeds Corporation Limited Conduct, Discipline & Appeal Rules, 1992."

4. Upon conclusion of the oral enquiry, the enquiry officer submitted his report, in which he came to the conclusion that the charge article 1 stood established. He also concluded that charges Nos. 2 and 3 were partially proved. On the basis of these conclusions and after considering the representations of the petitioner against the enquiry officer's report, the disciplinary authority, by his impugned order dated 24.5.2001, came to the conclusion that petitioner "did not comply with the instructions of the Area Manager to get the tags of failed lot No. Nov-97-24-50-03 removed from the bags, violated laid down procedure by not preparing CPI which is a basic requirement for despatch of seed and despatched 21 bags of failed lot seed along with good quality seed which on sale invited complaints. The above lapses on the part of the charged officer has not only

caused huge loss to the Corporation but it has also damaged the reputation of the Corporation in public eyes."

5. On the basis of the above conclusions, the disciplinary authority came to pass the above mentioned final order of punishment against the petitioner.

6. Appearing for the petitioner, learned Senior Counsel Mr. Oza has strongly urged that even considering the proved conduct of the petitioner, the final quantum of punishment is harsh and excessive and calls for interference. It is contended that at the very worst, the petitioner can be said to have acted negligently and that therefore the punishment of placing the petitioner to a lower stage in the time scale of pay by five stages for a period of 5 years, during which period the petitioner is disentitled to earn increments and to impose such a penalty with future effect would amount to great loss and injury to the petitioner which is disproportionate to the proved misconduct. It is further contended that the petitioner had a long meritorious career and for such a flimsy charge of negligence the punishment imposed is harsh and excessive.

7. In support of the contentions, learned Counsel for the petitioner has placed reliance on number of decisions of this Court as well as the Hon'ble Supreme Court of India. Reliance is placed on the decision of the Hon'ble Supreme Court in the case of Union of India & ors. Vs. J. Ahmed, reported in (1979) 2 SCC 286. On the basis of the said decision it is urged that mere negligence cannot be termed as misconduct and at any rate the punishment imposed was excessive.

In the said decision however, the Hon'ble Supreme Court was pleased to observe in paragraph 11 that "there may be negligence in performance of duty and a lapse in performance of duty or error of judgement in evaluating the developing situation may be negligence in discharge of duty but would not constitute misconduct unless the consequences directly attributable to negligence would be such as to be irreparable or the resultant damage would be so heavy that the degree of culpability would be very high". It was further observed that "carelessness can often be productive of more harm than deliberate wickedness or malevolence." It can thus be seen that in the above mentioned decision also it was found that there may be cases of gross negligence, which may invite considerable punishment from the employer.

7.2 Reliance was placed on the decision of this High Court in the case of H.L. Pandya Vs. Gujarat Agricultural University and ors, reported in 1986 Gujarat Law Herald (U.J) 32. In the said decision this Court observed that "Ordinarily this Court is loath to interfere with the discretion exercised by the authority charged with the duty to impose punishment; but when the punishment appears to be disproportionate to the established guilt, and one which is likely to adversely affect the career of the delinquent, the Court has no alternative but to interfere in the interest of justice."

7.3 Reliance is also placed on the decision reported in 1986 GLH (UJ) 46 (Sattuji Babaji Vs. State of Gujarat). This was however, a case where the Court interfered with the punishment of removal from service finding that the same was excessive in facts of the case.

7.4 Reliance is placed on the decision of this Court in the case of H.P. Thakore Vs. State of Gujarat, reported in 1979 GLR p.109 to contend that the penalty imposed must be as a result of judgement after considering pros and cons of the matter.

7.5 Reliance is placed on the decision of this Court in the case of Varsinh Bhagwan Vs. State of Gujarat reported in 1992 (2) GLH 311. This was however, a case where the order of dismissal was interfered with by the Court, since the charge against the Government servant was of remaining unauthorisedly absent.

7.6 Reliance is also placed on the decision of this Court in Bhimsing Sardarsing Vs. District Supdt. of Police & ors., reported in 11982 (2) GLR p.410. Learned Counsel for the petitioner stresses on the observations of the Court in the said decision that if the quantum of penalty assumes disproportionate dimensions, the power exercised by the authority are vitiated.

7.7 Decision of the Hon'ble Supreme Court in the case of Bhagat Ram Vs. State of Himachal Pradesh and ors., reported in (1983) 2 SCC 442 was also relied upon. This was a case where the Hon'ble Supreme Court found that the negligence on a lowly paid Class IV Government servant did not result into any loss to the Government and keeping in view the nature of conduct, gravity of charge and no consequential loss, penalty of withholding of two increments with future effect was found sufficient to meet with the ends of justice.

8. The question therefore that is required to be

decided is whether the disciplinary authority imposed a punishment on the petitioner which is so excessive as to call for interference by this Court. The law on the power of the Court to interfere with the quantum of punishment imposed by the employer on the basis of proved misconduct is by now well settled. In the decision of B.C. Chaturvedi Vs. Union of India, reported in AIR 1986 SC 484, the Hon'ble Supreme Court observed that the High Court or the Tribunal, while exercising the power of judicial review cannot normally substitute its own conclusion on penalty and impose some other penalty. It further observed that if the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the Court, it would appropriately mould the relief, either by directing the disciplinary authority to reconsider the penalty imposed, or to shorten the litigation, it may by itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.

In paragraph 18 of the decision, following observations have been made:

"A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to consider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

This view has been reiterated in number of decisions by the Hon'ble Supreme Court and it would not be necessary to repeat and reproduce all of them in this order. However, one may take note of the decision in the case of Chairman and Managing Director, United Commercial Bank Vs. P.C. Kakkar, reported in AIR 2003 SC 1571,

wherein, in paragraphs 11 and 12 following observations have been made.

> "11. The common thread running through in all these decisions is that the Court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the Court. In the sense that it was in defiance of logic or moral standards. In view of what has been stated in the Wednesbury's case (supra), that the Court would not go into the correctness of the choice made by the administrator open to him and the Court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in decision making process and not the decision."

> "12. To put difference unless the punishment imposed by the Disciplinary Authority or the Appellate Authority shocks the conscience of the Court/Tribunal, there is no scope for interference. Further to certain litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In a normal course if the punishment imposed is shockingly disproportionate it would be appropriate to direct the Disciplinary Authority or the Appellate Authority to reconsider the penalty imposed."

9. From the above decisions of the Hon'ble Supreme Court, it can be seen that this Court would have power to interfere with the choice of punishment imposed by the employer, only if the punishment is found to be so illogical so as to shock the conscience of the Court in the sense that it was in defiance of logic or moral standards. The Court would not ordinarily go into the correctness of the choice made by the administrator and the Court should not substitute its decision to that of the administrator. Even when the Court finds the penalty imposed excessive, it should ordinarily direct the disciplinary/appellate authority to reconsider the punishment, however to shorten the litigation, in exceptional and rare cases the Court itself may substitute the penalty imposed by the employer.

10. Reverting back to the facts of the present case, one finds that on the basis of proved misconduct, which

finding the petitioner has not challenged before this Court, the petitioner was found guilty of such negligence which resulted into circulation in the market certain seeds which were not certified to be of the required quality by the Corporation. These seeds reached the market and thereafter in the hands of individual farmers. The sub-standard quality of seeds did not yield the desired result and there were number of complaints received from the farmers. Quite apart from the monetary loss suffered by the Corporation on account of this mishap in order to compensate the aggrieved farmers, the entire episode also resulted into loss of confidence and loss of prestige on the part of the Corporation. The resultant effect of the negligence of the petitioner cannot be under-estimated. When the respondent is a State owned Corporation and is involved in preparing, developing and certifying seeds for the consumption of the farmers, if the Corporation itself is found to be allowing sub-standard seeds to enter the market which has occasioned on account of negligence on the part of the petitioner, the petitioner cannot be heard to say it was a mere minor lapse in discharge of his duty or that the negligence did not result into any substantial loss. The misconduct proved against the petitioner warranted punishment, the choice of which primarily lie with the employer. As noted earlier, unless the imposition of the penalty considering the charges levelled against the petitioner shocks the conscience of the Court, it would not be possible for this Court to interfere with the choice of punishment adopted by the employer. In the facts of the present case, as narrated earlier, the misconduct of the petitioner cannot be termed as minor, nor can it be stated that the penalty imposed is so outrageous as to shock the conscience of the Court, which would permit this Court to interfere with the quantum of punishment.

11. In the result the petition fails and is hereby rejected.

(Akil Kureshi, J.)

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